

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Robbyjoe V Yabut,

Plaintiffs,

vs.

Chipotle, et al.,

Defendants.

Case No. 2:24-cv-01223-CDS-MDC

**REPORT AND RECOMMENDATION TO  
DISMISS CASE**

The Court previously ordered plaintiff Robbyjoe V Yabut to: (1) show cause, in writing, regarding what steps he has taken to pay the partial filing fee, (2) pay the initial partial filing fee, or (3) file a new certified copy of the inmate trust fund account statement. See ECF Nos. 6 and 7. Plaintiff has not filed anything or paid the filing fee. The Court confirmed with the Clerk's office finance department that plaintiff has not paid the filing fee in this case. Plaintiff is a frequent filer in this Court, and he has paid the initial partial filing fee in at least one other case. See 2:24-cv-01014-APG-MDC, *Yabut v. Las Vegas Metro Police Department*, (D. Nev. 2024). Plaintiff has not paid the filing fee in this case or responded to the Court's Order to Show Cause. It appears that plaintiff has abandoned this case. The Court recommends that this case be dismissed.

**I. LEGAL STANDARD**

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*

1 v. *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply  
2 with local rules).

3 In determining whether to dismiss an action on one of these grounds, the court must consider: (1)  
4 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3)  
5 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;  
6 and (5) the availability of less drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460  
7 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.  
8 1987)).

## 9 II. ANALYSIS

10 The first two factors, the public's interest in expeditiously resolving this litigation and the court's  
11 interest in managing its docket, weigh in favor of dismissal of the plaintiffs' claims. Plaintiff has chosen  
12 not to comply with this Court's Order. The third factor, risk of prejudice to defendants, also weighs in  
13 favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in  
14 prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—  
15 the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors  
16 favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic alternatives can be used to  
18 correct the party's failure that brought about the Court's need to consider dismissal. *Yourish v. Cal.*  
19 *Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives before  
20 the party has disobeyed a Court order does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291  
21 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases  
22 that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the Court's Order as  
23 satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled with the warning of  
24 dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need not exhaust every  
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1 sanction short of dismissal before finally dismissing a case but must explore possible and meaningful  
2 alternatives.” *Henderson*, 779 F.2d at 1424.

3 This Court cannot operate without collecting reasonable fees and litigation cannot progress  
4 without a plaintiff’s compliance with Court orders. The only alternative is to enter another order setting  
5 another deadline. Issuing another order, however, will only delay the inevitable and further squander the  
6 Court’s finite resources. Setting another deadline is not a meaningful alternative given these  
7 circumstances. The fifth factor favors dismissal.

8 After weighing these dismissal factors, the Court finds that they weigh in favor of dismissal.  
9 Plaintiff has apparently abandoned this case. For the reasons discussed in this Order and the Court’s  
10 earlier Orders (ECF Nos. 6 and 7), plaintiff’s case should be dismissed.

11 IT IS RECOMMENDED THAT this case be DISMISSED.

12 Dated: January 13, 2025.

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15 Hon. Maximiliano D. Couvillier III  
16 United States Magistrate Judge

17 **NOTICE**

18 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
19 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
20 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
21 may determine that an appeal has been waived due to the failure to file objections within the specified  
22 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file  
23 objections within the specified time and (2) failure to properly address and brief the objectionable issues  
24 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the  
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1 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*  
2 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written  
3 notification with the court of any change of address. The notification must include proof of service upon  
4 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.

5 **Failure to comply with this rule may result in dismissal of the action.**  
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